IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 1903 (S/S) of 2005

Date of decision: 13.09.2006

Approved for reporting

~~Not approved for reporting~~

Date:-13-9-2006 Initial of Judge

Note: - Bench Reader will attach this at the top of the first page of the judgment when it is put before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Writ Petition No. 1903 (S/S) of 2005

BiJendra Singh
S/o late Naik/ Driver Shiv Singh Khatri
(No. 877020152)
Village Khainuri
P.O. Bhimtala
District Chamoli, Uttaranchal …Petitioners

Versus

1. Union of India
   Through Secretary of Home Affairs
   North Block, New Delhi
2. Commandant
   Transport Battalion
   Indian Tibet Border Police (ITBP)
   Hone Ministry/ Government of India
   P.O. Airport Chandigarh
   (Union Territory)

… Respondents

Dated: 13th September, 2006

Mr. Lalit Kumar learned counsel for the petitioner.
Mr. Arvind Vashisht learned Addl. A.G. for the Union of India.

Hon'ble J.C.S. Rawat, J.

1. By means of this writ petition under section 226 of the Constitution of India, the petitioners have sought the following reliefs:-

(i) To issue writ, rule or direction or appropriate writ as considered necessary commanding the respondents to grant compassionate appointment to the petitioner as a solider in the ITBP or alternatively grant him any other employment in a class 'D' post.

(ii) To award the costs of the petition.

(iii) and grant any other relief which the Hon'ble Court may deem fit, proper

and equitable on the facts and circumstances of the case.

2. The petitioner's case is that his father late Shiv Singh Khatri (No.877020152) joined the Indian Tibet Border Police (I.T.B.P) in the year 1982 as a soldier in the trade of driver at the age of about 21 years. In due course of time, the petitioner's father was promoted as 'Naik'. On 6.7.1987 his father while posted in Transport Battalion at Chandigarh was killed by the terrorists at the age of 26 years. Shiv Singh Khatri (No. 877020152) left behind his young widow and two children i.e. the petitioner who was 3 years old and his sister who was four months old at the time. According to I.T.B.P. Rules, a male is eligible for enrolment in force as a soldier. Since none of the male family members were eligible for appointment on 'compassionate grounds' in the I.T.B.P. at that time, the petitioner's mother was granted family pension and was advised to seek petitioner's employment on 'compassionate grounds' when he attained majority. The petitioner passed the intermediate examination in the year 2003 and he attained the majority in the year 2003. Unfortunately, the mother of the petitioner fell down in the hills and died at the spot leaving behind the petitioner and his sister all alone. As soon as the petitioner attained the age of majority, he filed his application before the respondent no. 2 that he might be appointed on 'companionate ground' in the I.T.B.P. in accordance with the Rules. Vide letter dated 16.09.2003 the respondent no. 2 asked the petitioner to submit his application alongwith the requisite documents. The petitioner submitted all the relevant documents alongwith the application on 18.10.2003 to the respondent no. 2.

When the petitioner did not receive any reply from the respondent no. 2 he again submitted his application alongwith other documents. In the meantime, it was informed by the respondent no. 2 that he had not received any application or any documents from him. The petitioner submitted application again alongwith other documents. Ultimately, on 18.06.2005 the respondent No. 2 returned the application of the petitioner stating therein that he is not eligible for appointment on 'compassionate ground' as he had submitted the application for appointment on 'compassionate ground' after 17 years of the death of his father and he ought to have made his application within 3 years from the date of his father. It was further stated that he had no given any application for being appointed in the I.T.B.P. Hence, this writ petition has been filed before the Court.

3. Heard learned counsel for the parties and perused the record.

4. It is not disputed that the father of the petitioner has been killed by the terrorists while posting in Transport Battalion at Chandigarh. Reservations and Concessions in Appointments (Swamy's Handbook 2006) provides as under:-

> **"5. Relaxation** (i) Age – Maximum age limit may be relaxed wherever necessary, but no relaxation is permissible in the minimum limit of 18 years. If the ward is below 18 years at the time of death of the Government servant and if he alone is available for employment, he should apply as soon as he attains 18 years."

5. In the instant case, admittedly the petitioner applied for the compassionate appointment immediately after attaining the age of 18 years in the year 2003. According to the I.T.B.P. Rules, a male is eligible for enrolment in the force as a soldier. Thus, the respondents' contention that the petitioner has not applied within six months is not tenable. It is also pertinent to mention here that the petitioner had submitted his application several times. The learned counsel for the petitioner has relied upon the Annexure-P1 to P8 by which the petitioner has submitted his application to the respondent no. 2 The adjutant of the respondent no. 2 himself has decided not to send the application to the headquarters or to the competent authority. The application of the petitioner should have been forwarded to the competent authority. This is a case where the decision to return the application was taken by an incompetent authority and the competent authority could not take the decision on the said application. In view of the foregoing discussion, it would be just and proper to direct the respondent no. 2 to place the application of the petitioner to the competent authority to decide the matter in accordance with the Rules.

6. In view of the foregoing discussion, the respondent no. 2 is directed to place the application of the petitioner before the competent authority to decide the matter in accordance with the Rules. The petitioner shall submit his application, which had been retuned by the respondent no. 2 to the petitioner, within a period of 15 days from the date of receipt of copy of this order. It is made clear that if the petitioner desires to file other document he can file the same alongwith the application. It the respondent no. 2 requires any other

formalities to be filled up he may require it from the petitioner. However, the respondents shall consider the case of the petitioner expeditiously.

7. The petition is disposed of accordingly. No order as to costs.

(J.C.S. Rawat, J.)

Dated 13.09.2006

LSR